

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF WASHINGTON  
3 SEATTLE DIVISION  
4

5 UNITED STATES OF AMERICA

6 Plaintiff,

7 v.

8 JEFFREY P. POMERANTZ,

9 Defendant.

) CASE NO. 2:16-cv-00689-JLR

) DEFENDANT'S REPLY IN SUPPORT  
) OF DEFENDANT'S MOTION TO  
) DISMISS PLAINTIFF'S COMPLAINT  
) AND/OR MOTION TO TRANSFER  
) VENUE UNDER 28 U.S.C. §1404

) NOTE ON MOTION CALENDAR:

) FRIDAY APRIL 28, 2017  
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13 DEFENDANT'S REPLY IN SUPPORT OF DEFENDANT'S MOTION TO  
14 DISMISS PLAINTIFF'S COMPLAINT  
15 AND/OR MOTION TO TRANSFER VENUE UNDER 28 U.S.C. §1404  
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17 The United States seeks to collect \$860,300.35 in penalties for failure to file a  
18 Federal Bank Account Reporting Form (FBAR). The defendant moved to dismiss  
19 the complaint under Federal Rules of Civil Procedure 12(b)(3), and 12(b)(6), and 28  
20 U.S.C §1404. The arguments the United States raised in opposition are insufficient  
21 to save their claims. The complaint, therefore, should be dismissed.  
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1 **ARGUMENT**

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3 **I. The Complaint Should Be Dismissed for Improper Venue Under Rule**

4 **12(b)(3).**

5 The Plaintiff correctly asserted that they correctly could have been proper in

6 any jurisdiction, but did not plead properly the correct venue selection as it was

7 based on no reasonable connection with that district. The United States it

8 appears is purposely choosing this venue to inconvenience the defendant as itself

9 has no fundamental reason for picking this district.

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11 **II. Because the United States is not entitled to relief on any of their**

12 **claims, the complaint must be dismissed under Rule 12(b)(6)**

13 Even if the Complaint were not barred by improper venue, it would

14 nevertheless warrant dismissal under Rule 12(b)(6).

15 Under Rule 12(b)(6), a complaint must be dismissed if, based on the

16 allegations stated in the complaint, the plaintiff is not entitled to the relief sought

17 either as a matter of fact or law. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2000). The

18 basis for the Government's allegations are formed from a series of incorrect facts

19 and assumptions, which even if true, do not give rise to the elements required under

20 legislation to assess this penalty. Namely, that there be a determination of willful

21 violation of the reporting law. The attached affidavit from the Defendant more

22 clearly outlines the mistake of fact in the Government's allegations which would not

23 meet a claim for which relief can be granted.

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The Plaintiff identifies 9 factors that weigh in a Courts determination to transfer venue in the 9<sup>th</sup> Circuit. The United States is basing their insistence to hold this trial in Washington based on factors 3 and 4. Factor 3 relates to the Plaintiffs choice of forum and factor 4 relates to the party's contacts with the forum. The Plaintiff has provided no evidence as to why it is insistent on having the trial in Washington State and why that is its particular choice of forum (Factor 3). The plaintiff does know that the defendant would have no representation in Washington State and may not be in the best position to defend the case, which would seriously prejudice the Defendant and give an unfair advantage to the Plaintiff.

## Conclusion

/s/ Jeffrey P. Pomerantz

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2017 a true copy of the foregoing  
DEFENDANT'S REPLY IN SUPPORT OF DEFENDANT'S MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT AND/OR MOTION TO TRANSFER VENUE  
UNDER 28 U.S.C. §1404 was filed electronically with the Clerk of the Court using  
the CM/ECF system, which will send a notification of such filing to the following:

Paul Butler  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
Washington DC. 20044  
*Counsel for Plaintiff United States of America*

/s/ Jeffrey P. Pomerantz

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*Pro se*